

AMENDED IN ASSEMBLY JULY 15, 1999  
AMENDED IN SENATE MAY 25, 1999  
AMENDED IN SENATE FEBRUARY 24, 1999

**SENATE BILL**

**No. 211**

**Introduced by Senator Solis**

January 20, 1999

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An act to amend ~~Section 12926~~ *Sections 12926 and 12960* of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

SB 211, as amended, Solis. Employment.

~~The~~

*Under existing provisions of the California Fair Employment and Housing Act, a person filing a complaint for an unlawful practice with the Department of Fair Employment and Housing is required to file within one year, except that the period for filing may be extended an additional 90 days if a person allegedly aggrieved first obtains knowledge of the facts after one year after their occurrence. The act provides, with certain exceptions, that an "employer" subject to the unlawful practices provisions of the act includes any person regularly employing 5 or more persons, or any person acting, directly or indirectly, as an agent of an employer, or the state or any political or civil subdivision thereof, and cities. For purposes of provisions defining unlawful employment practices related to mental disability, the act defines "employer" to mean any person regularly employing 15 or more persons, or any person directly or*

indirectly acting as an agent of such an employer, and also includes the state and municipalities and political subdivisions of the state.

This bill would provide that, for purposes of this act, the employer of an employee includes political or civil subdivisions of the state and its municipalities. The bill would also provide that there is a rebuttable presumption that “employer” includes any person or entity identified as the employer on the employee’s Federal Form W-2 (Wage and Tax Statement). *The bill also would extend the time for filing a complaint with the department for an alleged unlawful practice for an additional one year following a rebutted presumption of employer identity in order to allow the person allegedly aggrieved by an unlawful practice to make a substitute identification of the actual employer.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12926 of the Government Code  
2 is amended to read:  
3 12926. As used in this part in connection with  
4 unlawful practices, unless a different meaning clearly  
5 appears from the context:  
6 (a) “Affirmative relief” or “prospective relief”  
7 includes the authority to order reinstatement of an  
8 employee, awards of backpay, reimbursement of  
9 out-of-pocket expenses, hiring, transfers, reassignments,  
10 grants of tenure, promotions, cease and desist orders,  
11 posting of notices, training of personnel, testing,  
12 expunging of records, reporting of records, and any other  
13 similar relief that is intended to correct unlawful  
14 practices under this part.  
15 (b) “Age” refers to the chronological age of any  
16 individual who has reached his or her 40th birthday.  
17 (c) “Employee” does not include any individual  
18 employed by his or her parents, spouse, or child, or any  
19 individual employed under a special license in a nonprofit  
20 sheltered workshop or rehabilitation facility.



(d) “Employer,” except as described in paragraph (1) or (2), means any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, or the state or municipalities or any political or civil subdivisions thereof, and “employer” includes, ~~without limitation,~~ any person or entity identified as the employer on the employee’s Federal Form W-2 (Wage and Tax Statement), except as follows:

(1) “Employer” does not include a religious association or corporation not organized for private profit.

(2) “Employer,” for purposes of provisions defining unlawful employment practices related to mental disability, means any person regularly employing 15 or more persons, or any person directly or indirectly acting as an agent of that employer, or the state or municipalities or any political or civil subdivisions thereof, and there is a rebuttable presumption that “employer” includes, ~~without limitation,~~ any person or entity identified as the employer on the employee’s Federal Form W-2 (Wage and Tax Statement).

(e) “Employment agency” includes any person undertaking for compensation to procure employees or opportunities to work.

(f) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. “Essential functions” does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid or protection.

(h) "Medical condition" includes (1) genetic characteristics, or (2) any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence. For purposes of this section, "genetic characteristics" means any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or is determined to be associated with a statistically increased risk of development of a disease or disorder, or inherited characteristics that may derive from the individual or family member, that is presently not associated with any symptoms of any disease or disorder.

(i) "Mental disability" includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. However, "mental disability" does not include conditions excluded from the

1 federal definition of “disability” pursuant to Section 511  
2 of the Americans with Disabilities Act of 1990 (42 U.S.C.  
3 Sec. 12211). Additionally, for purposes of this part, the  
4 unlawful use of controlled substances or other drugs is not  
5 deemed, in and of itself, to constitute a mental disability.

6 (j) “On the bases enumerated in this part” means or  
7 refers to discrimination on the basis of one or more of the  
8 following: race, religious creed, color, national origin,  
9 ancestry, physical disability, mental disability, medical  
10 condition, marital status, sex, or age.

11 (k) “Physical disability” includes, but is not limited to,  
12 all of the following:

13 (1) Having any physiological disease, disorder,  
14 condition, cosmetic disfigurement, or anatomical loss that  
15 does both of the following:

16 (A) Affects one or more of the following body systems:  
17 neurological, immunological, musculoskeletal, special  
18 sense organs, respiratory, including speech organs,  
19 cardiovascular, reproductive, digestive, genitourinary,  
20 hemic and lymphatic, skin, and endocrine.

21 (B) Limits an individual’s ability to participate in  
22 major life activities.

23 (2) Any other health impairment not described in  
24 paragraph (1) that requires special education or related  
25 services.

26 (3) Being regarded as having or having had a disease,  
27 disorder, condition, cosmetic disfigurement, anatomical  
28 loss, or health impairment described in paragraph (1) or  
29 (2).

30 (4) Being regarded as having, or having had, a disease,  
31 disorder, condition, cosmetic disfigurement, anatomical  
32 loss, or health impairment that has no present disabling  
33 effect but may become a physical disability as described  
34 in paragraph (1) or (2).

35 It is the intent of the Legislature that the definition of  
36 “physical disability” in this subdivision shall have the  
37 same meaning as the term “physical handicap” formerly  
38 defined by this subdivision and construed in American  
39 National Ins. Co. v. Fair Employment & Housing Com.,  
40 32 Cal. 3d 603. However, “physical disability” does not

1 include conditions excluded from the federal definition of  
2 “disability” pursuant to Section 511 of the Americans with  
3 Disabilities Act of 1990 (42 U.S.C. Sec. 12211).  
4 Additionally, for purposes of this part, the unlawful use of  
5 controlled substances or other drugs is not deemed, in  
6 and of itself, to constitute a physical disability.

7 (l) Notwithstanding subdivisions (i) and (k), if the  
8 definition of “disability” used in the Americans with  
9 Disabilities Act of 1990 (Public Law 101-336) would result  
10 in broader protection of the civil rights of individuals with  
11 a mental disability or physical disability, as defined in  
12 subdivision (i) or (k), or would include any medical  
13 condition not included within those definitions, then that  
14 broader protection or coverage shall be deemed  
15 incorporated by reference into, and shall prevail over  
16 conflicting provisions of, the definitions in subdivisions  
17 (i) and (k).

18 (m) “Reasonable accommodation” may include either  
19 of the following:

20 (1) Making existing facilities used by employees  
21 readily accessible to, and usable by, individuals with  
22 disabilities.

23 (2) Job restructuring, part-time or modified work  
24 schedules, reassignment to a vacant position, acquisition  
25 or modification of equipment or devices, adjustment or  
26 modifications of examinations, training materials or  
27 policies, the provision of qualified readers or interpreters,  
28 and other similar accommodations for individuals with  
29 disabilities.

30 (n) “Religious creed,” “religion,” “religious  
31 observance,” “religious belief,” and “creed” include all  
32 aspects of religious belief, observance, and practice.

33 (o) “Sex” includes, but is not limited to, pregnancy,  
34 childbirth, or medical conditions related to pregnancy or  
35 childbirth.

36 (p) “Undue hardship” means an action requiring  
37 significant difficulty or expense, when considered in light  
38 of the following factors: (1) the nature and cost of the  
39 accommodation needed, (2) the overall financial  
40 resources of the facilities involved in the provision of the

1 reasonable accommodations, the number of persons  
2 employed at the facility, and the effect on expenses and  
3 resources or the impact otherwise of these  
4 accommodations upon the operation of the facility, (3)  
5 the overall financial resources of the covered entity, the  
6 overall size of the business of a covered entity with  
7 respect to the number of employees, and the number,  
8 type, and location of its facilities, (4) the type of  
9 operations, including the composition, structure, and  
10 functions of the work force of the entity, and (5) the  
11 geographic separateness, administrative, or fiscal  
12 relationship of the facility or facilities.

13 *SEC. 2. Section 12960 of the Government Code is*  
14 *amended to read:*

15 12960. The provisions of this article govern the  
16 procedure for the prevention and elimination of practices  
17 made unlawful pursuant to Article 1 (commencing with  
18 Section 12940) of Chapter 6.

19 Any person claiming to be aggrieved by an alleged  
20 unlawful practice may file with the department a verified  
21 complaint in writing ~~which~~ *that* shall state the name and  
22 address of the person, employer, labor organization, or  
23 employment agency alleged to have committed the  
24 unlawful practice complained of, and ~~which~~ *that* shall set  
25 forth the particulars thereof and contain such other  
26 information as may be required by the department. The  
27 director or his or her authorized representative may in  
28 like manner, on his or her own motion, make, sign, and  
29 file ~~such~~ *a* complaint. Any employer whose employees, or  
30 some of them, refuse or threaten to refuse to cooperate  
31 with the provisions of this part may file with the  
32 department a verified complaint asking for assistance by  
33 conciliation or other remedial action.

34 No complaint may be filed after the expiration of one  
35 year from the date upon which the alleged unlawful  
36 practice or refusal to cooperate occurred~~;~~, except that  
37 this period may be extended *as follows: (a)* for not to  
38 exceed 90 days following the expiration of that year, if a  
39 person allegedly aggrieved by an unlawful practice first  
40 obtained knowledge of the facts of the alleged unlawful

1 practice after the expiration of one year from the date of  
2 their occurrence, *or (b) for not to exceed one year*  
3 *following a rebutted presumption of the identity of the*  
4 *person's employer, as defined by subdivision (d) or*  
5 *paragraph (2) of subdivision (d) of Section 12926, in order*  
6 *to allow a person allegedly aggrieved by an unlawful*  
7 *practice to make a substitute identification of the actual*  
8 *employer.*

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